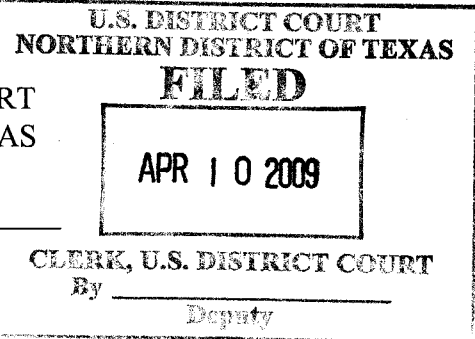


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



JOHN D. FAILS, PRO SE,
also known as
JOHN DANIEL FAILS, JR.,
also known as
JOHN D. FAILS, JR.
TDCJ-CID No. 1335587,
Previous TDCJ-CID No. 1330335,

Plaintiff,

v.

2:08-CV-0088

DENISE DeSHIELDS, Medical Director,
Texas Tech University Health Science Center,
BRAD LIVINGSTON, Executive Director,
Texas Department of Criminal Justice,
GERALD DAVIS, Asst. Warden at Neal Unit,
RISSIE OWENS, Chairperson, Texas Board of
Pardons and Paroles,

Defendants.

ORDER OF DISMISSAL

Plaintiff JOHN D. FAILS, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendants and was granted permission to proceed *in forma pauperis*.

On March 24, 2009, a Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's claims and recommending dismissal without prejudice for failure to state a claim on which relief can be granted and with prejudice as frivolous. The

Magistrate Judge further recommended the Court decline to exercise pendant jurisdiction of any state law claims asserted; and they be dismissed without prejudice

Plaintiff filed his Objections on April 1, 2009. By his Objections, plaintiff complains of the seriousness of his injuries, the unsatisfactory nature of the medical care he received, and the lasting limitations he now suffers. None of plaintiff's allegations show deliberate indifference on the part of one or more of the named defendants. In his Objections, plaintiff argues his medical care givers' acts or omissions constituted deliberate indifference, however, even if plaintiff were correct, and the care he recounts does not appear to support that position, plaintiff has not named any of his medical care givers as defendants.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that this Civil Rights Complaint is DISMISSED WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED AND WITH PREJUDICE AS FRIVOLOUS. The Court declines to exercise pendant jurisdiction of any state law claims asserted; and they are DISMISSED WITHOUT

PREJUDICE. *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Corwin v. Marney, Orton Investments*, 843 F.2d 194, 200 (5th Cir.1988).

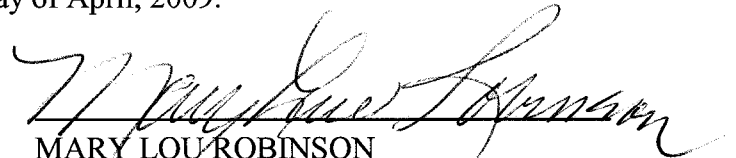
LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

ENTERED this 9th day of April, 2009.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE